

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

NICHOLAS BARBAROTTO, individually and
as Trustee of the NICHOLAS J.
BARBAROTTO REVOCABLE LIVING TRUST
AGREEMENT dated November 2, 2005,

No. C 06-1278 CW

ORDER GRANTING
MOTION TO VOID
THE JUDGMENT

Plaintiff,

v.

HARTFORD LIFE INSURANCE COMPANY dba
THE HARTFORD; and HARTFORD LIFE AND
ACCIDENT INSURANCE COMPANY,

Defendant.

On February 22, 2006, this case (2006 case) was filed on behalf of Nicholas Barbarotto, based on the denial of claims filed under two different insurance policies issued by Defendants Hartford Life Insurance Company and Hartford Life and Accident Insurance Company. The case was subsequently dismissed with prejudice by stipulation of the parties.

In late 2007, Vicki Caprio and Duane A. Barbarotto filed in state court a related action against Defendants Hartford Life Insurance Company and Hartford Life and Accident Insurance Company, which was later removed to this Court, Caprio et al. v. Hartford Life Ins. Co., C 08-338 CW (2008 suit). Defendants filed a motion

1 to dismiss, arguing that Caprio and Duane Barbarotto's claims were
2 barred by res judicata because of the judgment entered in this 2006
3 case.

4 In their opposition to the motion to dismiss the 2008 suit,
5 Caprio and Duane Barbarotto argued that this 2006 case is a
6 judicial nullity because Nicholas Barbarotto, purported Plaintiff
7 in this case, died before the complaint was filed. Therefore,
8 Caprio and Duane Barbarotto argued, the parties' stipulated
9 dismissal with prejudice in this case should not serve as a final
10 judgment on the merits for purposes of res judicata.

11 The Court granted Defendants' motion to dismiss the 2008 suit
12 and granted Caprio and Duane Barbarotto leave to amend. The Court
13 instructed that, if they wished to pursue the claims in the 2008
14 suit, Caprio and Duane Barbarotto must seek a judicial
15 determination that the judgment entered in this 2006 case is void
16 because this case was a nullity when filed. In particular, the
17 Court allowed Caprio and Duane Barbarotto to file in this case a
18 motion to void the judgment pursuant to Federal Rule of Civil
19 Procedure 60(b) and instructed them to include in the motion facts
20 related to Nicholas Barbarotto's death and the subsequent filing of
21 this suit in his name.

22 Caprio and Duane Barbarotto have now filed such a motion.
23 Despite the Court's explicit instructions, they have not included
24 any facts explaining why the 2006 case was filed in Nicholas
25 Barbarotto's name after his death. Moreover, neither Caprio and
26 Duane Barbarotto nor Defendants provide further insight into the
27 decision to dismiss with prejudice the claims in the 2006 suit.

1 Defendants oppose the motion arguing that (1) Caprio and Duane
2 Barbarotto have not established that they have standing and (2) no
3 competent evidence has been filed to support a finding that the
4 judgment should be voided.

5 I. Standing

6 Caprio and Duane Barbarotto do not respond to Defendants'
7 argument that they "have not submitted any admissible evidence with
8 their moving papers to demonstrate that they meet Article III's
9 standing requirements to prosecute this action." Opposition at 5.
10 However, it appears that, as Nicholas Barbarotto's children, Caprio
11 and Duane Barbarotto are successors in interest to Plaintiff in
12 this 2006 case. Moreover, Caprio and Duane Barbarotto do not seek
13 to prosecute this 2006 action. Rather they seek a judicial
14 determination that the judgment entered in this case, which was
15 void from its inception, is void.

16 II. Factual Support

17 Defendants next argue that Caprio and Duane Barbarotto have
18 failed to present competent evidence to support a finding that the
19 judgment is void. However, Defendants cite a lack of explanation
20 for Nicholas Barbarotto's counsel's¹ mishandling of this case
21 rather than a lack of support for a finding that the case was void
22 at its inception. Indeed, Caprio and Duane Barbarotto have
23 presented a death certificate establishing that Nicholas Barbarotto
24 died on February 14, 2006, eight days before this case was filed.

25
26 ¹The attorney who filed this 2006 case in Nicholas
27 Barbarotto's name also represents Caprio and Duane Barbarotto in
28 the 2008 case.

1 III. Alternative Remedy for Caprio and Duane Barbarotto and
2 Prejudice to Defendants

3 Finally, Defendants argue that if the judgment is not voided,
4 Caprio and Duane Barbarotto can still seek relief by bringing an
5 action against their attorney who stipulated to dismiss this 2006
6 case with prejudice. On the other hand, Defendants argue, if the
7 judgment is voided, Defendants will be prejudiced because they will
8 be forced to incur fees and expenses to litigate a case that was
9 previously dismissed with prejudice. However, such prejudice to
10 Defendants cannot override the fact that this case was void from
11 the outset.

12 CONCLUSION

13 For the foregoing reasons, the Court GRANTS Caprio and Duane
14 Barbarotto's motion to void the judgment in this 2006 case (Docket
15 No. 23). Within ten days of the date of this order, Caprio and
16 Duane Barbarotto may file an amended complaint in the 2008 case
17 consistent with the Court's instructions in the April 15, 2008
18 order in that case. If Defendants believe that it is necessary to
19 allay prejudice to them and they are so entitled, Defendants can
20 move for sanctions for the expenses caused by the dismissal with
21 prejudice in this case.

22 The hearing scheduled for June 19, 2008 is hereby VACATED.

23 IT IS SO ORDERED.

24 Dated: 6/17/08



25 CLAUDIA WILKEN
26 United States District Judge